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proved index system, action by the circuit court adopting a general index system is a condition precedent to the ascertainment of what general index system, other than that previously in use, it is the duty of the county clerk to use in indexing records in his office.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 688.]

9. Counties (§ 78 (1)*)—County Clerk—Fees.—The county clerk was entitled to the fee allowed by Code 1904, § 3505, for recording a deed to the county in addition to the allowance of \$50 made by the board of supervisors for road services, where such allowance was not made to cover recordation fees.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 682.]

Original mandamus proceedings by the Board of Supervisors of Culpeper County against W. E. Coons, and by W. E. Coons against the said Board of Supervisors. Denied in first cause, and awarded in part as prayed in second cause.

Edwin H. Gibson, of Culpeper, for Board of Supervisors of Culpeper County.

Hiden & Bickers, of Culpeper, and *Gilmer & Stant*, of Bristol, for Coons.

BABER et al. v. BABER et al.

Nov. 15, 1917.

[94 S. E. 209.]

1. Evidence (§ 178 (2)*)—Writings—Best Evidence—Lost Original.—Where the original writing has been lost, but there exists a copy made by an attorney, not authenticated by the clerk, but there is no other copy, such copy is admissible as the best evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 364.]

2. Adverse Possession (§ 70*)—"Color of Title"—What Constitutes.—"Color of title" must be by writing purporting to pass title containing sufficient terms to designate the land, though conveying no title.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Color of Title.* For other cases, see 1 Va.-W. Va. Enc. Dig. 206.]

3. Adverse Possession (§ 72*)—Color of Title—What Constitutes.—An instrument, called a bill of bargain and sale, naming the parties, reciting that one sold to the other certain lands, describing them, for one-half the merchantable fruit on the place, the grantee to furnish the grantor's wife board and lodging during her lifetime, under which

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the grantee went into possession and claimed adversely, was sufficient to constitute color of title.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 206.]

4. Adverse Possession (§ 84*)—Color of Title—Good Faith.—Where the grantee was required to perform certain acts through a period of over 30 years, claimed to have performed them, and asserted title under the instrument in two suits in which the instrument was filed as an exhibit, he must be taken to have made claim of title in good faith, believing the instrument to be valid.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 205; 206.]

5. Tenancy in Common (§ 15 (7, 8, 10)*)—Adverse Possession—Notice of Possession—Character—Evidence.—Notice to or knowledge of coparceners, or others originally in privity with the disseisor, of his disclaimer of their interest and assertion of adverse right, which is prerequisite to the running of the statute of limitations, may be constructive or presumptive from a great lapse of time, with other circumstances, and may be proved by circumstantial evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 212; 8 Va.-W. Va. Enc. Dig. 127.]

6. Tenancy in Common (§ 15 (7, 8)*)—Adverse Possession—Notice—Character.—Where the grantee, in a writing dated May, 1874, in his answer in a suit in May, 1878, set up his own title and denied that of other heirs, such other heirs had notice of his assertion of adverse right, and could not in 1909 deny such notice, which had been accompanied for the intervening period by open, notorious, and continuous possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 212; 8 Va.-W. Va. Enc. Dig. 127.]

7. Tenancy in Common (§ 15 (5)*)—Adverse Possession—Character—Nonresidents.—Since nonresidents labor under no disability with respect to the rights to sue in the state, and when proceeded against by order of publication, their rights are limited under Code 1904, §§ 2986, 3233, nonresidence of one claimant of land does not affect the adverse possession of another under color of title.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 212; 8 Va.-W. Va. Enc. Dig. 127.]

8. Adverse Possession (§ 85 (4)*)—Adverse Claim—Evidence—Sufficiency.—Where the grantee under writing claimed adversely, and set up such claim by answer in a suit by other claimants, one of such other claimants cannot, by testifying that, after the answer of the adverse claimant, he attempted to buy out the witness' interest in the property, defeat the adverse claim.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 226.]

9. Equity (§ 84*)—Laches—Application—Pending Causes.—The

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

same rule with respect to laches being a bar to the institution of a suit in equity applies to the right to further prosecute a pending cause.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 99.]

10. Equity (§ 72 (1)*)—Laches—Prejudice.—While mere lapse of time does not bar the right to prosecute a pending action, yet where delay results in death of parties and loss of evidence, a court of equity will hold that it is too late to ascertain the merits in the controversy, and will not interfere.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 96.]

11. Equity (§ 73*)—Laches—Loss of Evidence.—Where grantee under a deed in 1874 claimed in good faith to have performed his bargain, and set up adverse claim against other heirs in their suit in 1878, but they did nothing to prosecute the suit until 1909, the result being that testimony was lost, and the original papers were lost, they were estopped by their laches to secure relief.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 96.]

Appeal from Circuit Court, Albemarle County.

Suit by Joseph E. Baber and others for partition against the heirs at law of John H. Baber, deceased, and others, wherein Mary C. Wilson and William L. Greene and another filed cross-bills and answers. From the decree rendered, the defendants appeal. Reversed, and bill dismissed.

R. T. W. Duke, Jr., of Charlottesville, for appellants.

Chapman & Averill, of Madison, *W. W. Moores*, of Stanardsville, *Watson & Bolling*, of Charlottesville, and *Alderson & Breckinridge*, of Summerville, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.